IN THE HIGH COURTOF PUNJAB AND HARYANA, CHANDIGARH.

CWP No. 20710 of 2006
Date of decision: 25.1.2008

Gagandeep Singh and another

....Petitioners.

vs.

Union of India and others.

..Respondents

CORAM: HON'BLE MR.JUSTI CE J.S.KHEHAR.
HON'BLE MR.JUSTICE RANJIT SINGH.
HON'BLE MR.JUSTICE M.M.S.BEDI.

Present: Mr.Vikas Behl, Advocate, for the petitioners.

Mrs.Naveender P.K.Singh, Advocate, for respondent Nos. 1 to 5.

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J.S.KHEHAR,J.

1. The present controversy relates to the action of the respondents in denying a passport to petitioner No.1 Gagadeep Singh the minor adopted son of petitioner No.2 Manjit Kaur. When the issue pertaining to the controversy came to be canvassed before this Court in the first instance, learned counsel for the petitioner had placed emphatic reliance on a decision rendered by the Full Bench of this Court in Pawan Deep Singh v. Union of India and another AIR 2004 (Punjab) 106. In Pawan Deep Singh's case (supra), the petitioner who was an applicant for a passport, had been adopted by his uncle living in Italy. Pawan Deep Singh's application for the grant of a passport was turned down because his adoption by his uncle living in Italy was considered to be invalid. The controversy raised in the present case is substantially similar to the one raised in Pawan Deep Singh's case. Gagandeep Singh, Petitioner No.1 in the present case, has been adopted by his aunt (sister of the natural mother of petitioner No.1.) Manjit

Kaur, petitioner No.2. Gagandeep Singh has also been denied a passport on the ground that his adoption by his aunt Manjit Kaur is not being considered valid.

2. While adjudicating upon the controversy referred to in the foregoing paragraph, a Full Bench of this Court in Pawan Deep Singh's case (supra) had the occasion to examine Section 6 of the Passports Act, 1967 (hereinafter referred to as "the Passports Act"). It was thereupon concluded, that the Passport Authorities could refuse to issue a passport to an applicant, on any one or more of the nine grounds expressed in Section 6 (2) of the Passports Act, and on no other ground. While dealing with the same contention advanced by the learned counsel for the petitioner (in the present case) for the same relief as had been granted to the petitioner in Pawan Deep Singh's case (supra), this Court passed the following order on 9.5.2007:-

> " The respondents have refused to issue a passport to petitioner No.1. It is, therefore, that the instant writ petition has been filed, impugning the action of the respondents in declining to issue a passport to petitioner No.1. The primary contention of the learned counsel for the petitioners, to assail the action of the respondents, is based on a judgment rendered by a Full Bench of this Court in Pawan Deep Singh v. Union of India and another, AIR 2004 (Punjab) 106. In the aforesaid case, while interpreting section 6 of the Passport Act, 1967, the Full Bench observed as under :
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> > "9. A bare perusal of Section 6 aforementioned shows that except on four grounds mentioned in sub-section(1) and nine grounds mentioned in sub-section (2) of Section 6 on no other ground there could be refusal to grant Passport or travel document ."
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> It is necessary, however, to notice that there was no discussion on the matter and no other provision, besides section 6 of the Passport Act, 1967, was taken into consideration.
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> It would, however, be pertinent to mention that section 6 commences with the words "Subject to the other provisions of this Act...". It is, therefore, apparent, that the provisions of the Passport Act, 1967, envisage grounds for

> refusal of a passport to an applicant, other than the 13 grounds noticed by the Full Bench, in the extract, reproduced by us, hereinabove.
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> Learned counsel for the respondents submits, that other grounds for refusal of a passport, besides those mentioned under section 6 of the Passport Act, 1967, emerge from sections 5(2) and 10(3) of the said Act. Learned counsel for the respondents, accordingly, submits that the matter in hand cannot be deemed to be completely and effectively adjudicated upon in the decision rendered by this Court in Pawan Deep Singh's case (supra). It would, therefore, be in the fitness of matter, that the controversy should be re-adjudicated by a Full Bench of this Court. Since the issue is of vital interest and arises for consideration repeatedly at short intervals, it would be in the interest of all concerned that the issue be taken to its logical conclusion at the earliest.
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> In view of the above, Hon'ble the Chief Justice may constitute a Full Bench, for the aforesaid purpose, at the earliest. The Registry is, accordingly, directed to place this order for his Lordship's perusal, without any further delay."

3. The order passed by the Division Bench on 9.5.2007, resulted in the constitution of the present Full Bench.

4. The present Full Bench shall, therefore, once again embark on the task of determining, whether or not there are any other provisions besides Section 6 of the Passports Act, under which a passport can be declined to an applicant i.e. besides the nine grounds expressed in Section 6 (2) of the Passports Act.

5. Learned counsel for the rival parties have invited our attention to the introduction, as well as, the statement of objects and reasons of the Passports Act. A perusal thereof reveals that the Supreme Court by a majority decision, in Satwant Singh Sawhney v. Union of India AIR 1967 SC 1836, held that the right to travel abroad was an integral part of a person's personal liberty protected and preserved as a fundamental right under Article 21 of the Constitution of India. And that, Government had no

right to interfere with an individual's personal liberty except in accordance with procedure, established by law. The Apex Court accordingly also concluded, that Government did not enjoy an absolute discretion in the matter of issuing passports. The aforesaid conclusion was drawn in the back ground of the fact that prior to the decision in Satwant Singh Sawhney's case (supra), Government in exercise of its executive power exercised an unfettered discretion in the matter of issue of passports.

6. As Parliament was not in session, an Ordinance namely the Passports Ordinance 1967 (hereinafter referred to as “the Passports Ordinance”) was promulgated immediately after the decision in Satwant Singh Sawhney's case (supra), so as to lay down the procedure and parameters for the grant and denial of passports. The Passport Ordinance prohibited the departure from India of any person without a passport or a travel document. The Ordinance also provided for the machinery and the mechanism for the issuance of passports. The Passport Ordinance additionally defined the grounds on which a passport could be refused. The said Ordinance also specified the grounds on which a passport could be impounded or revoked.

7. The Passports Act replaced the Passports Ordinance on 24.6.1967.

8. Learned counsel for the rival parties keeping in mind their rival interest, read and re-read to us the provisions of Sections 5,6 and 10 of the Passports Act. Whilst, the objective of the learned counsel for the petitioner was emphatically aimed at justifying the conclusion drawn by the Full Bench in Pawan Deep Singh's case (supra) i.e. that the refusal of a passport to an applicant, must essentially be based on the nine grounds

specified in Section 6(2) of the Passports Act, and on no other ground. Learned counsel for the respondents, on the contrary, relying heavily on Sections 5 and 10, as well as, the provisions of the rules framed thereunder emphatically canvassed, that a passport can be refused by the Passport Authorities for reasons/grounds besides those specified under Section 6(2) of the Passports Act.

9. Having heard learned counsel for the parties, we are of the view, that it would be appropriate, in the first instance, to search answers for the following three propositions. Firstly, whether or not the "consideration"of the claim of an applicant for the issuance of a passport can be "refused" if the applicant has provided wrong information, or has suppressed material information while submitting the application form. This proposition relates to a stage before deciding whether or not an applicant has the "right" to hold a passport. The instant issue would have within its purview the limited determination of the "validity" of the application submitted by an applicant seeking a passport. Secondly, whether an applicant can be refused the "right" of holding a passport despite the fact that he has submitted a valid application for the same. The instant issue essentially relates to a situation where the validity of the application submitted by the applicant for issuance of a passport (unlike the first proposition) is not a matter of dispute. And thirdly, whether a person who has in his possession a passport, can be deprived of the same, by revoking the passport issued to him, or by impounding it, on the ground that the application had been wrongfully "considered" in the first instance, or that the applicant does not have a "right" to hold the passport. In the instant proposition, there is no presumption of the applicant being eligible for

"consideration" for the issuance of a passport, nor that the applicant has the "right" to hold a passport. These propositions could be drawn only after hearing of the matter concluded. The purport of each of the three propositions would unfold with the interpretation of the different provisions of the Passports Act, coupled with the submissions advanced by the rival parties.

10. The first proposition raised in paragraph 9, first.

11. Section 5 of the Passports Act requires that an application submitted for the grant of a passport should be in a specific format, and should be submitted along with the fee specified therefor. Section 5 also vests a right in the Passport Authorities to make an inquiry into the correctness of the particulars disclosed by the applicant in his application form. Section 5 of the Passports Act, also vests the decision making authority with the right/authority to "accept" an application or to "refuse" to accept the same. Section 5 aforesaid thus defines the procedural code for the issuance of a passport. Section 5 of the Passports Act is being reproduced hereunder:-

> "**5. Applications for passports, travel documents, etc. and orders thereon;-**
>
> (1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by such fee as may be prescribed to meet the express incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents.
>
> Explanation:- In this section " named foreign country" means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf
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> (1A) An application for the issue of -

(i) a passport under this Act for visiting a named foreign country; or

(ii) a travel document under this Act, for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or travel document referred to in this section ,

may be made to the Passport Authority and shall be accompanied by such fee (if any) not exceeding rupees fifty, as may be prescribed.

(IB) Every application under this section shall be in such form and contain such particulars as may be prescribed.

(2) On receipt of an application under this section, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by an order in writing--

(a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

(3) Where the passport authority makes an order under clause (b) or clause © of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy."

12. An examination of Section 5(1) of the Passports Act, reveals

that an application form for the issuance of a passport is to be accompanied by such fee "as may be prescribed". Sub section (1-B) of Section 5, mandates that an application form for a passport must be in such form as "may be prescribed". Incidentally, the words "... as may be prescribed ..." appear repeatedly in the Passports Act. Reference in this behalf may be made to Section 7 of the Passports Act which deals with the duration of the validity of a passport. The duration being such "as may be prescribed" Likewise, Section 9 of the Passports Act stipulates, that the issuance of a passport would be subject to such conditions "as may be prescribed".

13. In order to understand the term "prescribed" used in different provisions of the Passports Act, one must essentially fall back on Section 2 (d) of the Passports Act, which defines the said term as under:-

"**2. Definitions:-** In this Act, unless the context otherwise requires;-

(d) "prescribed" means prescribed by rules made under this Act".

A perusal of Section 2(d) of the Passports Act, leads one to the rule making authority vested in the Central Government under Section 24 of the Passports Act. Section 24 of the Passports Act, is also being extracted hereunder:-

> **24. Power to make rules**_(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
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> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely;
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> (a) the appointment, jurisdiction, control and functions of passport authorities;
>
> (b) the classes of persons to whom passports and travel documents referred to respectively in sub-section (1) and sub-section (2) of section 4 may be issued;

(c) the form and particulars of application for the issue or renewal of a passport or travel document or for endorsement on a passport or travel document and where the application is for the renewal, the time within which it shall be made;

(d) the period for which passports and travel documents shall continue in force;

(e) the form in which and the conditions subject to which the different classes of passports and travel documents may be issued, renewed or varied;

(ee) specifying the foreign country for the purposes of the Explanation to sub-section (1) of section 5:

(f) the fees payable in respect of any application for the issue of a passport under sub section (1) of section 5 or issue of a passport for visiting a foreign country referred to in sub-section (1A) of section 5 or travel document or for varying any endorsement or making a fresh endorsement on a passport or a travel document and the fees payable in respect of any appeal under this Act;

(g) the appointment of appellate authorities under sub-section (1) of section 11, the jurisdiction of, and the procedure which may be followed by, such appellate authorities;

(h) the services (including the issue of a duplicate passport or travel document in lieu of a passport or travel document lost, damaged or destroyed) which may be rendered in relation to a passport or travel document and the fees therefor;

(i) any other matter which is to be or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of the Act.

(3) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both House agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

14. In exercise of the powers vested with the Central Government under Section 24 of the Passports Act, the Central Government notified the

Passports Rules, 1980 (hereinafter referred to as "the Passports Rules") on 11.10.1980. It also needs to be noticed that Section 24(3) of the Passports Act, requires that rules made by the Central government under the aforesaid provision have to be placed before the two Houses of Parliament. The rules so framed by the Central Government, unless modified or annulled by the two Houses of Parliament come into effect as they are drawn by the Central Government. If both the Houses of Parliament, do not accept the rule(s), framed by the Central Government, the rule(s) framed by the Central government do not come into effect. And in case, the Houses of Parliament agree that the rule(s) should be framed in a modified form , then the rule(s) in such modified form, as are approved by both the Houses of Parliament, come into effect.

15. (i) So as to limit the deliberations to the subject matter in hand, relating to the first proposition, reference may be made to Section 5 (1-B), which postulates that every application for a passport must be in the form "prescribed". Section 24(2)(c) of the Passports Act authorizes the Central Government to make rules providing for "the form and particulars of application" for the issuance of a passport. In continuation with the aforesaid power vested in the Central Government, rule 5 of the Passports Rules, provides as under :-

> "**5. Form of applications**;- (1) An application for the issue of a passport or travel document or for the renewal thereof or for any miscellaneous service shall be made in the appropriate Form set out therefore in Part I of Schedule III and in accordance with the procedure and instructions set out in each form;
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> Provided that every application for any of the aforesaid purposes shall be made only in the form printed and supplied by-
>
> (a) the Central Government; or
>
> (b) Any other person whom the Central Government may

by notification specify, subject to the condition that such person complies with the conditions specified by that Government in this behalf;

Provided further that in the course of any inquiry under sub-section (2) of section 5, a passport authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application.

(2) The price of the new application forms referred to in sub rule (1) shall be as specified in column 3 or 4, as the case may be, of Schedule III A for that particular category;

(3) The Passport Authority may authorise any person or authority to collect passport applications on its behalf for use of a passport or travel document or for the renewal thereof or for any miscellaneous service on payment of a service charge specified by the Central Government under sub rule(2) of rule 8 in addition to the fee payable under sub rule (1) of rule 8 and the service charge shall be paid by the applicant to such person or authority".

A perusal of rule 5, extracted hereinabove, reveals that an application for a passport has to be in the format thereof set out in Part-I of Schedule-III, and also, in "accordance with the procedure and instructions set out in such form". It would, therefore, essentially follow that a valid application submitted for the issuance of a passport, should be in the format stipulated under the Passport Rules.

(ii) Section 5(1) of the Passports Act mandates that an application form is to be accompanied by such fee, as may be "prescribed". Section 24(2)(f) of the said Act vests power in the Central Government to provide for the fees payable. Rule 8 of the Passports Rules, which deals with the issue, is being extracted hereunder:-

"**8. Fee payable on applications;- (1)** The fee payable on every application mentioned in column (2) of Schedule IV shall be at the rates specified in the corresponding entry in column (3) or column (4), as the case may be of that schedule".

A perusal of the aforesaid rule reveals that the fee expressed in Schedule-IV

appended to the Passport Rules, would be payable by an applicant seeking a passport. It would, therefore, essentially follow that a valid application for a passport would be one wherein the prescribed fee is enclosed.

(iii) Stated briefly, the provisions of the Passports Act lay down the duration for which a passport can be issued (section 24(2)(d) of the Passports Act read with with rule 12 of the Passports Rules). The aforesaid statutory provisions also prescribe the conditions subject to which a passport can be issued (section 24(2)(ee) of the Passports Act read with rule 12 of the Passports Rules). The eligibility of an individual for the different classes of passports (ordinary/official/diplomatic) envisaged under Section 4 of the Passports Act (read with section 24(2)(b) of the Passports Act and rule 4 of the Passports Rules). And the countries to which a passport holder can travel, or the countries to which a passport holder is restrained from travelling (envisaged under Sections 5 and 19 of the Passports Act, read with section 24(ee) of the Passports Act and the Passports Rules). The Rules referred to in the instant sub paragraph are not being extracted as two illustrations on the same lines in the two sub-paragraphs above fully elaborate the issue which is sought to be projected.

16. From a cumulative reading of Sections 5,7 and 9, with section 2(d) and Section 24 of the Passports Act, it is inevitable to conclude that the provisions of the Passports Act, and the provisions of the Passports Rules have to be read together Only when read together the procedure for the issuance of a passport, as also, the essential prerequisites for the issuance of a passport become clear. Illustratively, although an application for a passport is made under Section 5 of the Passports Act, the format thereof and the fee to be affixed therewith have been specified under the

Passport Rules. Accordingly, an application for a passport would not be valid unless it has been made on the "prescribed ' application form and along with the "prescribed" fee. Again, the Passports Act conceives of three kinds of passports i.e. ordinary, official and diplomatic. The conditions of eligibility of an individual for an official or diplomatic passports, however, emerge only from the Passports Rules. Accordingly, an application for an official or diplomatic passport can only be accepted if the conditions "prescribed" therefor under the Passport Rules are fulfilled. Further illustrations would only be repetitive, and as such, are being avoided for brevity. It is, therefore, abundantly clear that the provisions of the Passport Rules cannot be over looked. Since the Passport Rules have the force of law, it is also natural to conclude that they are mandatory in nature.

17. From the provisions of the Passports Act and the Passports Rules, referred to above, a number of situations pertaining to the validity of an application form submitted under Section 5(1) of the Passports Act, may arise. In fact, after the submission of an application form, the passport authoritieis (under Section 5(2) of the Passports Act) are required to hold an inquiry so as to determine the validity of the application. It is obvious, therefore, that before a passport is issued, the first and foremost responsibility of the concerned Passport Authority is, to determine the validity of the application form submitted for the said purpose.An applicant would not be eligible for "consideration" if his application form itself is not valid. As such, any further deliberation on the matter i.e. whether or not an applicant has the "right" to be issued a passport would not raise, unless the application itself is valid. Illustrations drawn from the provisions of the Passports Act and the Passports Rules, can project the issue for an effective

conclusion. The following illustrations have, therefore, been formulated for the purpose :-

(i) Mahesh Kumar son of Balwant Kumar applies for a passport in the name of Pawan Kumar son of Balwant Kumar.

(ii) Joginder Singh son of Jaswant Singh applies for a passport in the name of Joginder Singh son of Balwant Singh.

(iii) Jaswant Rai son of Baldev Rai applies for a passport by affixing the photographs of Balwant Rai (the brother of the aforesaid Jaswant Rai) son of Baldev Rai.

(iv) Arun Kapoor resident of C-618,New Friends Colony, New Delhi, applies for a passport describing his address as House No.730 Sector-8, Panipat, Haryana .

(v) Though employed as a Clerk with Max India Limited at SCO 411 Sector-8, Chandigarh, the applicant Baleshwar Dass son of Ram Dass who has been enrolled with the Bar Council of Punjab and Haryana under the Advocate's Act.1961, applies for a passport by asserting that he is a self employed professional practising as an Advocate at the District Courts at Chandigarh .

(vi) Medha Agnihotri daughter of Devinder Agnihotri had earlier applied for a passport, whereupon she was issued a passport bearing No. XYZ 1234. Medha Agnihotri had lost her passport and had also not retained any particulars thereof. While applying for a passport again, Medha Agnihotri does not disclose the factum of her having been issued passport bearing No.XYZ 1234, while filling up column No.11 of the application form.

(vii) Meenal Goel daughter of Brijesh Goel who had to return to

India on an Emergency Certificate (or on account of her being deported from a foreign country, or on account of her repatriation) under the belief that she may be denied a passport, does not disclose the factum of her having returned to India on an Emergency certificate (or on deportation, or on repatriation), while filling up column 11-A of the application form.

(viii) Gudda Ram son of Lall Ram resident of a remote village in the Ladakh region of Jammu and Kashmir applies for a passport on a plain paper disclosing all facts and material particulars required under the provisions of the Passports Act and the Passports Rules, as he is not in an effective position to travel from his remote village to procure the prescribed application form- from the Passport Authorities.

(ix) Simmi Grewal daughter of Joginder Grewal applies for a passport on the prescribed application form but does not enclose therewith the fees stipulated therefor under the Passport Rules.

In illustration (i) above, the description of the applicant Pawan Kumar is incorrect/false. His application form therefore, cannot be treated as valid on inquiry. In illustration (ii), the description of the parent of the applicant Joginder Singh is incorrect/false, and as such his application form cannot be termed as valid and legally acceptable. In illustration (iii) the identity of the applicant Jaswant Rai does not conform with the photographs affixed on the application form. The application form submitted by Jaswant Rai is a matter of fraud and deceit and, therefore, cannot be termed as valid or legally tenable. In illustration (iv) the residential address of Arun Kapoor is incorrect/false. The residential address indicated by him is actually that of

his wife's parents, but that is really not the applicant's residential address, as is the requirement. The application form of Arun Kapoor cannot be termed as valid on scrutiny. In illustration (v) the true factual position about the employment of the applicant Baleshwar Dass has not been disclosed. In fact the applicant Baleshwar Dass has committed two discrepancies in the form, firstly, he has withheld the correct factual position about his employment, and secondly, he has provided false information about being a professional practising as an Advocate. His application form, therefore, is not valid. The applicant Medha Agnihotri has suppressed material particulars relating to the issuance of an earlier passport to her. She has withheld certain facts which she was required to disclose while filling up column No.11 of the application form. Her application cannot, therefore, be accepted as valid on inquiry. In illustration (vii) the applicant Meenal Goel has withheld vital and relevant information pertaining to her having had to travel to India on an Emergency Certificate (or on account of deportation or on repatriation). The applicant has suppressed material information required to be disclosed by her. Her application form cannot be treated as valid on scrutiny. In illustration (viii) the application form submitted by Gudda Ram is not on the prescribed format/form. The application form submitted by Gudda Ram does not conform to the provisions of Rule 5 read with Part-I of Schedule-III of the Passport Rules and as such cannot be termed as valid. In illustration (ix) the application form submitted by Simmi Grewal has not enlosed the prescribed fee stipulated under Rule 8 of the Passport Rules, the same cannot, therefore, be accepted as valid on scrutiny.

18. According to the determination rendered by the Full Bench in Pawan Deep Singh's case (supra), an application form for the grant of a

passport can be declined only for the reasons expressed in Section 6 of the Passports Act. Section 6 of the Passports Act is being extracted hereunder:-

> "**6. Refusal of passports, travel documents etc.;-(**1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of sub-section (2) of Section 5 or any one or more of the following grounds, and on no other grounds, namely-
>
> (a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;
>
> (b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;
>
> (c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;
>
> (d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.
>
> (2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 or any one or more of the following grounds, and on no other ground , namely:-
>
> (a) that the applicant is not a citizen of India;
>
> (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;
>
> (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;
> (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;
>
> (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
>
> (f) that proceedings in respect of an offence alleged to

> have been committed by the applicant are pending before a criminal court in India;
>
> (g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;
>
> (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation."

None of the discrepancies in the application form mentioned in the illustrations in paragraph 17 hereinabove, fall within the scope and ambit of the grounds delineated in Section 6 of the Passports Act for refusing a passport to an applicant. Does that, therefore, mean that an applicant who applies for a passport under a wrong name, or with an incorrect parentage, or by affixing a photo which does not identify him correctly, or by disclosing a wrong residential address, or by furnishing such other similar false/incorrect information, has to be issued a passport ? Additionally, does it also mean that an applicant who withholds and suppresses vital information sought in the application form, has to be issued a passport ? Furthermore, does it also mean that an application submitted in violation of the mandatory provisions of the Passport Rules has to be issued a passport ?

19. In order to answer the queries referred to in the foregoing paragraph, learned counsel for the respondents invited our attention to Section 5 (2) of the Passports Act wherein a responsibility is placed on the concerned Passport Authority to make an inquiry on the receipt of an application form for a passport. Learned counsel for the respondents also invited the Court's attention to the second proviso under sub rule (1) of Rule 5 of the Passports Rules wherein the concerned Passport Authority

has been authorized to require an applicant to furnish additional information, documents or certificates, as may be considered necessary, for the proper "disposal of an application" for a passport. According to learned counsel, such an inquiry would be an empty formality if the concerned Passport Authority cannot decline a passport on the basis of such an inquiry. It is submitted that an "inquiry" contemplated specifically by the aforementioned statutory provisions cannot be a hollow formality. An inquiry could have been expressly provided for if it was to serve a fruitful purpose. Learned counsel for the respondents has also invited the Court's attention to Section 5 (2) of the Passports Act, wherein the concerned Passport Authority, on having conducted the inquiry is required to take a decision, either to issue a passport to the applicant , or refuse to issue a passport to him. It is pointed out that in the latter eventuality, a remedy of filing an appeal is available to an applicant (whose application has been refused) under Section 11 of the Passports Act. According to learned counsel for the respondents, the inquiry envisaged under Section 5 (2) of the Passports Act is aimed at verifying the veracity of the contents of the application form and thereupon, the determination whether or not the application itself is valid. If nothing wrong/incorrect is detected in the inquiry, the application is acceptable as valid. A valid application would lead to the next consideration i.e. whether the applicant has the "right" to be issued a passport. On the contrary, if the application itself is defective or invalid it needs no further consideration, and can be summarily rejected by the concerned Passport Authority. It is, therefore, the submission of the learned counsel for the respondents, that the inquiry conceived of under Section 5 of the Passports Act and rule 5 of the Passports Rules, can lead

to the "refusal" of any further "consideration" of the claim of the applicant for the issuance of a passport i.e. even prior to the determination of his "right" to hold a passport.

20. In response to the aforesaid submission advanced by the learned counsel for the respondents, learned counsel for the petitioner has vehemently asserted that Parliament in its wisdom while framing Section 5 (already extracted above) of the Passports Act, used the term "refuse to issue the passport", in Section 5(2)(c) of the Passports Act, and for understanding the term "refused to issue the passport" in Section 5(2)(c) of the Passports Act, the Parliament incorporated Section 6 in the Passports Act, wherein the Parliament clearly expressed what it meant while using the word "refuse" in the context of issuance of a passport. It is also the contention of the learned counsel for the petitioner that the grounds for the refusal of the passport have clearly and exhaustively been narrated in Section 6 of the Passports Act. It is also the contention of the learned counsel for the petitioner, that the use of the words " and on no other ground" expressed in Section 6(2) clearly denude the Passport Authorities from entertaining even a thought of having any authority to refuse a passport for any other reason besides the grounds mentioned in Section 6 of the Passports Act.

21. Having examined the submissions advanced by the rival parties, one is constrained to fall back on the very judgment rendered by the Apex Court, which compelled the Parliament in the first instance to promulgate the Passport Ordinance, which came to be subsequently replaced by the Passports Act, namely, Satwant Singh Sawhney's case (supra) wherein the majority decision of the Supreme Court declared that

the right to travel abroad is a part of an individual's right to personal liberty and that, an individual can not be deprived of his right of personal liberty, except according to procedure prescribed by law, in terms of the mandate of Article 21 of the Constitution of India. The Supreme Court in its judgment also concluded that Government in exercise of its executive authority did not have an absolute discretion to refuse a passport to a person who might have applied for the same. The Apex Court further held that Government's claim for an absolute discretion in the matter of issuance of a passport would be violative of the provisions of Article 14 of the Constitution of India. Relevant extracts from Satwant Sawhney's case (supra) are being reproduced hereunder:-

> 12. The want of a passport in effect prevents a person leaving India. Whether we look it as a facility to a person to travel abroad or as a request to a foreign country to give the holder diplomatic protection, it cannot be denied that the India Government,by refusing a permit to a person residing in India, completely prevents him from travelling abroad. If a person living in India, whether he is a citizen or not, has a right to travel abroad, the Government by withholding the passport can deprive him of his right. Therefore, the real question in these Writ petitions is: Whether a person living in India has a fundamental right to travel abroad ?
>
> 13. The relevant Article of the Constitution is Article 21. It reads:
>
> > "Art.21. No person shall be deprived of his life or personal liberty except according to procedure by law".
>
> If the right to travel is a part of the personal liberty of a person he cannot be deprived of his right except according to the procedure established by law. This Court in Gopalan's case, 1950 SCR 88: (AIR 1950 SC 27) has held that `law' in that article means enacted law and it is conceded that the State has not made any law depriving or regulating the right of a person to travel abroad"
>
> xxx xxx xxx xxx
>
> 28. In Kharak Singh v. State of U.P., 1964-1 SCR 332 at pp. 345,347: (AIR 1963 SC 1295 at pp.1301,1302), the question was whether the State by placing the petitioner under survelliance infringed his fundamental right under Art.21 of the Constitution. This Court, adverting to the expression "

personal liberty", accepted the meaning put upon the exprssion "liberty" in the 5th and 14th Amendments to the U.S.Constitution by Field,J. In Munn v. Illinois (1877)94 US 113 but pointed out that the ingredients of thesaid expression were placed in two Articles viz., Arts.21 and 19 of the Indian Constitution. This Court expressed thus:
"It is true that in Art.21 as contrasted with the 4th and 14th Amendment in the U.S. The word "Liberty" is qualified by the word `personal' and therefore its contents is narrower. But the qualifying adjective has been employed in order to avoid overlapping between those elements or incidents of "liberty" like freedom of speech or freedom of movement etc. already dealt with in Art. 19(1) and the "liberty guaranteed by Art.21". The same idea is elaborated thus:

"We ..... consider that "personal liberty" is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the "personal liberties" of man other than those dealt with in the several clauses ofArt.19(1). In other words, while Art.19(1) deals with particular species of attributes of that freedom "personal liberty" in Art. 21 takes in and comprises the residue."

This decision is a clear authority for the position that "liberty" in our Constitution bears the same comprehensive meaning as is given to the expression"liberty" by the 5th and 14th Amendments to the U.S.Constitution and the expression "personal liberty" in Art.21 only excludes the ingredients of "liberty" enshrined in art.19 of the Constitution. In other words, the expression "personal liberty" in Art.21 takes in theright of locomotion and to travel abroad, but the right to move throughout the territories of India is not covered by it inasmuch as it is specially provided in Art.19. There are conflicting decisions of High Courts on this question. A Division Bench of the the Madras High Court, consisting of Rajamannar, C.J. And Venkatarama Ayyar, J. in V.G.Row v. State of Madras,ILR 1954 Mad.399: (AIR 1954 Mad 240) considered this question in the context of the application filed for the issue of a writ of mandamus directing the State of Madras to endorse passport of the petitioner as valid for travel to U.S.S.R. and other countries in Europe. The petitioner there complained that the refusal of an endorsement of the passport to any country was a violation of the fundamental right granted to him under Art.19(1)(d) of the Constitution and Art.14 thereof. The learned Judges considered the scope of a passport and its place in the foreign travel and came to the conclusion that, as the law then stood the State could not prevent the petitioner from leaving for U.S.S.R. Merely on the ground that he did not hold a passport endorsed to that country and that there was no provision of law under which a citizen like the petitioner could be prevented from re-entering India

> after travel to foreign countries except with a passport. On the basis of that finding the Court held on the asumption that Art.19(1)(d) would apply to foreign travel, that there was no restriction on that right. It may also be noticed that no argument was advanced before the Bench on the basis of Art.21 of the Constitution. This decision does not help the respondents".

After examining different judgments rendered by the High Courts of Bombay, Delhi, Kerala and Mysore, the Apex Court in Satwant Singh Sawhney's case (supra) by majority, concluded as under :-

> "32. For the reasons mentioned above we would accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed bythe Delhi High Court. It follows that under Art.21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was made by the State regulating or depriving persons of such a right".

The Supreme Court reiterated that the right to travel abroad is a fundamental right in Smt.Maneka Gandhi v. Union of India , AIR 1978 S.C.597, by concluding as under :-

> "54 ..... It is indeed difficult to see on what principle we can refuse to give its plain natural meaning to the expression `personal liberty' as used in Article 21 and read it in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. We do not think that this would be a correct way of interpreting the provisions of the Constitution conferring fundalemtal rights. The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. The wave length for comprehending the scope and ambit of the fundamental rights has been set by this Court in R.C.Cooper's case and our approach in the interpretation of the fundamental rights must now be in tune with this wave length. We may point out even at the cost of repetition that this Court has said in so many terms in R.C.Cooper's case that each freedom has different dimensions and there may be overlapping between different fundamental rights and therefore it is not a valid argument to say that the expression `personal liberty' in Article 21 must be so interpreted as to avoid overlapping between that Article and Art.19(1). The expression `personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and

some of them have been raised to the status of distinct fundamental rights and given additional protection under Art.19. Now, it has been held by this Court in Satwant Singh's case (AIR 1967 SC 1836) that `personal liberty' within the meaning of Article includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior per to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in Satwant Singh's case was struck down as invalid. It will be seen at once from the language of Article 21 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported bylaw; and law here means `enacted law' or `State law'. Vide A.K.Gopalan's case. Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for the reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for resulting the right to go abroad. It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so.....".

"55..... The law must, therefore, now be taken to be well settled that Art.21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of `personal liberty' and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decision in R.C.Cooper's case. Shambhu Nath Sarkar's case and Haradhan Saha's case. Now, if a law depriving a person of `personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21 has to stand of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, exhypothesi it must also be liable to be tested with reference to article 14. This was in fact not disputed by the learned Attorney General and indeed he could not do so in view of the clear and categorical statement made by Mukherjee,J. In A.K.Gopalan's case that Article 21 "presupposes that the law is a valid and binding law under the provisions of the Constitution having regard to the competence of the legislature and the subject it relates to and does not infringe any of the fundamental rights which the Constitution provides for, "including Article 14.....".

"56. Now, the question immediately arises as to what is the requirement of Article 14: What is the content and reach of

> thegreat equalising principle enunciated in this artile ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E.P.Royappa v. State of Tamil Nadu (1974)2 SCR 348: (AIR 1974 SCS 555) namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be `right and just and fair' and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied..."

22. Surely no law or statutory enactment can be interpreted in a manner so as to enable an individual to abuse the same. If Mahesh Kumar has to be issued a passport although he has applied for it as Pawan Kumar, it would also amount to an abuse of the process of law. If an applicant whose father's name is Jaswant Singh has to be issued a passport though he applies for it by describing his father's name as Balwant Singh, it would also amount to an abuse of the process of law. Likewise, if an applicant applies for a passport by giving a wrong residential address, or describes the particulars of his employment or occupation incorrectly,or if an applicant has furnished such other similar false/incorrect data has to be issued a passport, it would amount to an abuse of the process of law. Additionally, if

an applicant has suppressed material information, as for instance information pertaining to his having had to travel back of India on an Emergency Certificate, or information pertaining to his having applied for political asylum, or information about his having been deported or repatriated, surely if such a person also has to be issued a passport it would amount to an abuse of the process of law. Again, if an applicant while applying for a passport does not abide by the mandatory provisions of the Passports Rules, as for instance, he does not apply for a passport on the prescribed form, or he does not enclose with his application form the prescribed fee, or if he applies for a diplomatic passport despite his ineligibility for the same, if such a person also has to be issue a passport, it would again amount to an abuse of the process of law.

23. In actuality also the provisions of the Passports Act clearly and unambiguously forbid the issue of a passport to an individual whose application contains wrong information or where the material information sought is suppressed. Reference in this behalf may be made to Section 10 of the Passports Act, which is reproduced hereunder:-

> "**10. Variation, impounding and revocation of passports and travel documents;- (1)** The passport authority may, having regard to the provisions of sub-section (1) of section 6 or any notification under section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, requisite the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.
>
> (2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions)

of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document;-

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) If the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf :

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment not less two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

(f) if any of the conditions of the passport or travel document has been contravened.

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same ;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrantor summons has been so

issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document.

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay, surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation".

A perusal of Section 10, extracted above, reveals that a passport issued to an individual can be impounded or revoked if it had been obtained by suppressing material information or on the basis of wrong information. It will be absurd, therefore, to conclude, that suppression of material

information or disclosure of wrong information cannot be the basis for refusing a passport, though it can be the basis of its being impounded or revoked. It is, therefore, obvious that the inquiry contemplated under Section 5 (2) of the Passports Act,as well as, by the second proviso under rule 5(1) of the Passports Rules is pointedly for the purpose of detecting, whether or not an applicant has furnished correct information,as well as, whether or not there is suppression of material information, as also to determine whether any of the provisions of the Passports Rules, have not been complied with. The aforesaid inquiry is not an empty formality or an effort in futility. It has to be concluded, that the instant inquiry is for "consideration" of the validity of an application submitted for a passport. If the inquiry results in a positive conclusion, then, and only then, the next step can be taken, namely, whether the applicant has the right to have a passport. If any discrepancy is detected in the application form. the concerned Passport Authority would legitimately be duty bound to decline any further consideration. In such a situation the Passport Authorities would not even consider whether the applicant has the right to have a passport.

24. If an applicant submits an application form by complying with the provisions of the Passport Rules, and an inquiry conducted into the matter by the concerned Passport Authority under Section 5(2) of the Passports Act does not reveal that the applicant has furnished any incorrect information, or that the applicant has suppressed any material information, such an application cannot be declined under Section 5 (2)(c) of the Passports Act. In other words, if the application itself is valid there can be no "refusal" under Section 5 of the Passports Act.

25. As and when a passport is "refused" because the appliation

submitted for the said purpose itself is not valid, the same would not "technically" amount to refusal of the applicant's right to hold a passport. According to the situations referred to in the illustrations mentioned in paragraphs 17 hereinabove, an applicant cannot be considered to have submitted a "valid" application made in consonance with law. And an application not validly in consonance with law, being a void application, can be rejected without evaluating the "merits" of the claim of the applicant to hold a passport. At the present juncture, it would be appropriate to examine the text of the impugned order dated 20.4.2006.The said order is accordingly reproduced hereunder:-

> " Please refer to your application submitted in this office vide File No. cited above dated 01.02.2006 regarding grant of passport facilities in r/o Gagandeep Singh adopted by Manjot Kaur d/o Puran Chand.
>
> As per Hindu Adoption & Maintenance Act, 1956 it has been laid down to the below mentioned conditions to be complied with strictly:-
>
> > " If the adoption is by a female and the person to be adopted is a male, the adopting mother is at least 21 years older than the person to be adopted.".
>
> In this case age difference between adoptive mother and adopted male child is less than 21 years and the same has been executed in violation of the provision of Hindu Adoption and Maintenance Act, 1956.
>
> It has therefore been decided to refuse passport facilities in the particular of adoptive parentage".

A perusal of the aforesaid order reveals that the application of petitioner No.1 Gagandeep Singh for the issue of a passport had not been considered in the background of his adoptive parentage depicted therein. It is, therefore, apparent that the Passport Authorities had not "technically" refused to issue a passport to the petitioner. The refusal of the petitioner's

application was on account of the fact that his parentage was not rightfully depicted in the application. Simply stated, the concerned Passport Authority was of the view that the petitioner had furnished wrong information about his parentage. Paragraph 2 of the preliminary submissions contained in the joint written statement filed on behalf of the respondents also depicts that the refusal by the concerned Passport Authority was based on the fact that application submitted by the petitioner Gagandeep Singh was not in order. The "right" of the petitioner to be issued a passport has factually never been examined by the Passport Authorities, since the application submitted by the petitioner itself was not accepted as valid or legally tenable. In fact it needs pointed reference that the learned counsel for the respondents repeatedly asserted, that if the petitioner Gagandeep Singh submitted a fresh application with his correct parentage, he would be issued a passport without any objection.

26. Now, the second proposition/issue framed in paragraph 9 above.

27. Before dealing with the second proposition, we must first advert to the decision rendered earlier by this Court in Pawan Deep Singh's case (supra) wherein this Court had concluded on the basis of Section 6 of the Passports Act that except for the nine grounds mentioned in sub section (2) thereof, the concerned Passport Authority cannot refuse to issue a passport. Learned counsel for the petitioner has vehemently reiterated the aforesaid conclusion by inviting this Court's attention to Section 6 of the Passports Act (already extracted above) wherein, according to learned counsel, the provision exhaustively deals with the grounds for "refusal" of a passport. Learned counsel for the petitioner has invited this Court's

attention to section 6(2) of the Passports Act wherein the liberty to the -concerned Passport Authority for "refusing" a passport to an applicant has been confined to the nine grounds expressed therein, through the clear and unambiguous words "on any one or more of the following grounds" with the further unambiguous rider that such refusal could be "on no other ground". Referring again to the words "on no other grounds", it is submitted that according to the principles of interpretation, use of negative words in a statutory provision lead to the inference that the same is mandatory. It is, therefore, the vehement contention of the learned counsel for the petitioner that the concerned Passport Authority while exercising its discretion to "refuse" a passport to an applicant under Section 5(2)(c) of the Passports Act, can do so, only on the grounds mentioned in Section 6 of the Passports Act. In order to substantiate the instant condition i.e. that the refusal of a passport under Section 5(2)(c) of the Passports Act, has to be limited to the grounds mentioned in Section 6 of the Passports Act, learned counsel for the petitioner invited the our attention to the words "subject to the other provisions of this Act" contained in sub section (2) of Section 5 of the Passports Act, which connotation (according to the learned counsel for the petitioner) is relatable to the discretion vested in the concerned Passport Authority to issue a passport to an applicant, or to refuse to issue the same. Accordingly, it is the contention of the learned counsel for the petitioner, that the use of the words "subject to the other provisions of this Act" in section 5(2) places a curb on the determination by the concerned Passport Authority, so as to limit its discretion while "refusing" to issue a passport to confine itself within the parameters of the grounds of refusal expressed in Section 6 of the Passports Act.

28. On a query from the Court (addressed to the learned counsel for the petitioner,) requiring him to tender an explanation to the meaning that has to be assigned to the words " Subject to the provisions of this Act" occurring at the beginning of clause (1) of Section 6 of the Passports Act,and again repeated at the beginning of clause (2) of Section 6 of the Passports Act, which had necessitated the instant reference and the constitution of the present Full Bench, learned counsel for the petitioner submitted, that the words " Subject to the other provisions of this Act" at the beginning of the two clauses of Section 6 of the Passports Act, were clearly superfluous, because the entire reading of the Passports Act does not reveal any other ground in the entire Act, for the refusal of a passport. It was emphatically pointed out, by the learned counsel for the petitioner, that no further ground for rejection of a passport was expressed even in Sections 5 and 10 of the Passports Act, which had been heavily relied on, by the opposing counsel. In so far as Section 10 aforesaid is concerned, it is submitted, that the grounds mentioned therein are more or less the same as those contained in Section 6 of the Passports Act.

29. Having given our thoughtful consideration to the submissions advanced by the learned counsel on the second proposition, it is not possible to conclude, that the words "subject to the other provisions of this Act" repeated in the two clauses of Section 6 of the Passports Act, can be ignored by describing them as superfluous. Each word expressed in a statute has to be given an appropriate meaning and has to be harmoniously construed, with the other provisions of the enactment. There is no doubt about the veracity of the contention advanced by the learned counsel for the petitioner that no grounds for refusal of a passport have expressly been mentioned in

Section 5 of the Passports Act. It is, however, not possible to accept his contention that the grounds mentioned in Section 10 of the Passports Act, are more or less the ones referred to in Section 6 of the Passports Act. A perusal of the narration in paragraph 23 hereinabove, reveals that a passport can be revoked or impounded if the concerned Passport Authority finds out, that the passport holder had applied for the same by asserting incorrect facts or by suppressing material information. Surely, if a passport can be revoked or impounded for certain reasons it an also be "refused" for the same set of reasons. A conclusion to the contrary would be absurd. Furnishing incorrect facts or suppressing material particulars do not constitute a ground for refusal of a passport under Section 6 of the Passports Act. Learned counsel for the petitioner is, therefore, not right in his assertion that the grounds mentioned in Section 10 of the Passports Act, overlapped the grounds mentioned in Section 6. The words "subject to the other provisions of this Act" contained in Section 6 of the Passports Act, are most certainly relatable to the compliance of an applicant to the provisions of the Passports Act and the Passport Rules., as has been deliberated upon while dealing with the first proposition (paragraphs 11 to 25 hereinabove). The refusal of a passport under section 5 of the Passports Act is indeed only a "technical refusal" without considering the claim of an applicant on "merits" based on the applicant having furnished wrong information, or having suppressed material information, or for non compliance of the provisions of the Passport Rules. Such a refusal does not amount to the determination of the "right" of an individual to be issued a passport. The refusal at the hands of the concerned Passport Authority under section 5 (2) (c) of the Passports Act, as has been concluded by us above, does not

amount to the denial of the "right" to have a passport. If such an applicant who has been refused a passport under Section 5(2)(c) of the Passports Act submits a valid application, disclosing correct information without suppressing any material information, in consonance with the provisions of the Passport Rules, such an applicant's claim shall have to be re-considered. An applicant who submits a valid application, can be "refused" a passport only on any one or more of the nine grounds referred to in sub section (2) of Section 6 of the Passport Act. A "refusal" to issue a passport under Section 6 of the Passports Act deals with the determination of the legal "right" of the applicant to have a passport. Section 6 of the Passports Act carves out the grounds which can be stated to constitute the procedure established by law for the "refusal" of the "right" to hold a passport, referred to in the decisions rendered by the Supreme Court in Satwant Singh Sawhney's and Maneka Gandhi's cases (supra).

30. In rendering the conclusion hereinabove, on the second proposition, the judgment rendered by the Full bench of this Court in Pawan Deep Singh's case (supra) is hereby reiterated, inasmuch as, the concerned Passport Authority on the receipt of a valid application for a passport, can refuse to grant a passport only on any one or more of the grounds mentioned in Section 6 of the Passports Act. The instant reiteration is, therefore, subject to the clarification that an application submitted for the issue of a passport can be refused only for the nine grounds mentioned in Section 6(2) of the Passports Act, subject to the condition that the application form is found to be valid (as per the conclusions drawn on the first proposition). The instant "refusal" under section 6(2) of the Passports Act constitutes a refusal of the "right" of an applicant to hold a passport.

31. Now third proposition carved out in paragraph 9 above.

32. Insofar as, the third proposition is concerned, reference must necessarily be made to Section 10 of the Passports Act (already reproduced above)which inter alia, vests in the concerned Passport Authority, the power to impound or revoke a passport already issued. A perusal of sub section (3) of Section 10 of the Passports Act, reveals eight grounds whereby a passport earlier issued to an individual can be impounded or revoked. Interestingly the impounding or revocation of a passport is based on the same very ground already dealt with in the first and second proposition, namely, wherein the applicant is refused consideration under Section 5 of the Passports Act, and in situations where an applicant is found to be disentitled therefor under Section 6 of the Passports Act.

33. In answering the reference made by the Division Bench vide its order dated 9.5.2007 it is, therefore, concluded:-

(i) The concerned Passport Authority can “refuse” the very “consideration” of the claim for a passport to an applicant, whose application form is not valid on account of the fact that it either furnishes incorrect information, or because material information has been suppressed, or even if any of the mandatory provisions of the Passport Rules have not been adhered to. The refusal of a passport under Section 5 of the Passport Act however, is not a determination of the “right” of the applicant to hold a passport. As and when a valid application is made (including a fresh application after the initial refusal) under Section 5 of the Passports Act, the same will have to be reconsidered in accordance with the provisions

of law.

(ii) The "refusal" of the "right" of an applicant to hold a passport, can only be on one or more of the nine grounds contained in Section 6 (2) the Passports Act. The Passports Act does not incorporate any other ground other than those mentioned in Section 6(2) of the Passports Act, for determining the "right" of an applicant to be granted a passport. Therefore, subject to the clarification, that the consideration of the "right" of an applicant for the issuance of a passport arises only after the receipt of a valid application (i.e. after a favourable conclusion of an inquiry under Section 5 of the Passports Act) the decision rendered by the Full Bench in Pawan Deep Singh's case (supra) is hereby reiterated.

(iii) A passport holder can be "deprived" of a passport already issued to him on any one or more of the grounds contained in Section 10 of the Passports Act.

34. Despite having answered the reference hereinabove, we have not deliberated on the validity of the impugned order dated 20.4.2006 by which application of petitioner No.1 Gagandeep Singh for a passport was rejected. *Stricto senso* the matter ought to be sent back to the Division Bench after the reference has been answered. Since however, submissions were addressed by the learned counsel for the parties, during the course of hearing by this Bench, it would be repetitive and a waste of time, if the matter is sent back to a Division Bench requiring it to re-hear the matter again. So as to save precious Court time, it would be just and appropriate to deal with the validity or otherwise of the impugned order dated 20.4.2006

herein itself.

35. The impugned order dated 20.4.2006, reveals that the claim of petitioner No.1 Gagandeep Singh for a passport had been declined on account of the description of his adoptive parentage in the application form submitted by him. In other words, it was concluded by the concerned Passport Authority that the information furnished by petitioner No.1 Gagandeep Singh in his application form was wrong. The denial of a passport to the petitioner Gagandeep Singh is, therefore, in terms of the first proposition canvassed hereinabove. The refusal of a passport to petitioner No.1 Gagandeep Singh is based on the conclusion that the application form was not validly submitted as it contained wrong information in respect of the parentage of the applicant. In order to determine the "right" of the petitioner Gagandeep Singh for the issuance of a passport and or the validity of the impugned order dated 20.4.2006, it would be imperative for him to submit a valid application form. We shall now endeavour to determine whether he had submitted a valid application form.

36. According to the learned counsel for the respondents the adoption of petitioner No.1 Gagandeep Singh by petitioner No.2 Manjit Kaur is invalid, and accordingly, the application form records an incorrect parentage of petitioner No.1. In the instant determination, therefore, it would be necessary to record a conclusion whether or not the adoption of petitioner No.1 Gagandeep Singh by petitioner No.2 Manjit Kaur is valid.

37. On the issue of validity of the parentage of petitioner No.1 depicted in the application, learned counsel for the rival parties based their submissions on the provisions of the Hindu Adoption and Maintenance Act,

1956 (hereinafter referred to as the Adoption Act). It is the vehement contention of the learned counsel for the petitioner based on the adoption deed dated 20.4.2005 that the respondents have no right to independently adjudicate on the validity of the adoption of the petitioner specially in view of the mandate of Section 16 of the Adoption Act. Section 16 of the Adoption Act is being extracted hereunder:-

> "**16. Presumption as to registered documents relating to adoption:-** Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

A perusal of section 16 of the Adoption Act, reveals that a registered deed of adoption attaches with it a presumption of truth and only a Court of law can negate the aforesaid presumption. It is also the contention of the learned counsel for the petitioner that no one has challenged the adoption of petitioner No.1 Gagandeep Singh by petitioner No.2 Manjit Kaur. It is also his submission, that the natural parents of petitioner No.1 duly satisfy the conditions incorporated in Section 9 of the Adoption Act, enabling them to give away the petitioner by way of adoption. Additionally, it is the contention of learned counsel, that petitioner No.2 Manjit Kaur satisfied all conditions required by a female Hindu expressed in Section 8 of the Adoption Act, to take petitioner No.1 Gagandeep Singh in adoption. It is also the contention of the learned counsel for the petitioner, that petitioner No.1 satisfies all conditions expressed in the Adoption Act for his being given and taken in adoption. In view of the above, it is the vehement contention of the learned counsel for the petitioner, based on the provisions

of Sections 6,8,9 and 10 of the Adoption Act, that no wrong information was submitted by Gagandeep Singh petitioner No.1, while filling up the application form claiming a passport. Additionally, the adoption deed dated 20.4.2005 and section 16 of the Adoption Act (already extracted above) result in a statutory presumption that his adoption by petitioner No.2 is valid and only a Court can negate the same. In the absence of a Court order it is submitted that the Passport Authorities are bound by the said statutory presumption. It is, therefore, submitted, that the respondents were wholly unjustified in denying a passport to the petitioner by concluding that the adoption of petitioner No.1 Gagandeep Singh was invalid.

38. As against the submissions advanced by the learned counsel for the petitioner, learned counsel for the respondents has invited our attention to Section 5 and 11(iv) of the Adoption Act, which are reproduced hereunder:-

> "**5. Adoptions to be regulated by this Chapter:-(1)** No adoption shall be made after the commencement of this Act or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.
>
> (2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.
>
> "**11. Other conditions for a valid adoption**- In every adoption, the following conditions must be complied with :-
>
> (i) to (iii) xxx xxx xxx xxx
>
> (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;
>
> (v) and (vi) xxx xxx xxx xxx ".

According to the learned counsel for the respondents, since the age difference between petitioner No.1 Gagandeep Singh (admittedly a Hindu male) and his adoptive mother i.e. Manjit Kaur petitioner No.2 (admittedly a Hindu female) is less than 21 years. The adoption of petitioner No.1 Gagandeep Singh, by petitioner No.2 Manjit Kaur, is in clear violation of the condition expressed in Section 11(iv) of the Adoption Act. On the factual aspect of the matter, learned counsel for the respondents vehemently contended that the issue of age difference between petitioner No.1 and petitioner No.2 was determined on the basis of facts and information furnished by the petitioners themselves. Relying on the provisions of Section 5 of the Adoption Act, learned counsel for the respondents vehemently contends that an adoption made in violation of the provisions of the Adoption Act, is void and does not create any right.

39. Learned counsel for the petitioners does not dispute that the factual position in respect of the age difference between petitioner No.1 Gagandeep Singh and petitioner No.2 Manjit Kaur, is less than 21 years.

40. On the basis of the admitted factual position, we have no other alternative but to hold the adoption of Gagandeep Singh petitioner No.1 by Manjit Kaur petitioner No.2 as void under Section 5 of the Adoption Act, on account of non fulfillment of condition expressed in Section 11 (iv) of the Adoption Act, for a valid adoption. In the background of the admitted factual position the legal presumption sought by the learned counsel for the petitioner by relying on Section 16 of the Adoption Act, stands duly repudiated. The admission at the hands of the petitioners themselves disproves the validity of the adoption of petitioner No.1 by petitioner No.2.

41. For the benefit of the learned counsel for the petitioner, we

must also notice another submission addressed by him on the instant issue (of adoption). It was vehemently contended by the learned counsel for the petitioner that the difference of age between petitioner No.1 and petitioner No.2 was 20 years and 5 months, and as such, the stipulation of age difference expressed in Section 11(iv) of the Adoption Act, should be overlooked. In order to substantiate his claim that the provisions of Section 11(iv) should be over looked, it is also the contention of the learned counsel for the petitioner, that the petitioner was given in adoption by his natural parents, to none other than the sister of his natural mother. It is also his contention that the mandate of the Adoption Act has only one objective, namely, the benefit of the child. In the instant case, it would be in the petitioner's benefit if his adoption is upheld, as his adoptive mother Manjit Kaur petitioner No.2 will be able to look after the academic career of petitioner No.1 Gagandeep Singh much better than his natural parents. It is, therefore, sought to be concluded, that it would be in the interest of one and all, and most certainly of the minor Gagandeep Singh if he is issued a passport so that he can travel to Austria as the adoptive child of Manjit Kaur.

42. Despite the sentiment expressed in the submissions advanced by the learned counsel for the petitioner (as have been noticed in the foregoing paragraph) it is not possible for us to overlook an express statutory provision. As already noticed hereinabove, the adoption of petitioner No.1 Gagandeep Singh by Manjit Kaur petitioner No.2, is in violation of the Adoption Act. In the discharge of our responsibility, as the guardians of law, we cannot succumb to sentiments to overlook the law.The adoption of Gagandeep petitioner No.1 by Manjit Kaur is void, we must,

therefore, declare it to be so. It is, therefore, not possible for us to accept the contentions advanced by the learned counsel for the petitioner, that despite the petitioner's void adoption, the same should be recognized as valid, so as to enable him to have a better future.

43. We consider it just and appropriate to record a note of caution for the Passport Authorities. Although we have upheld the order passed by the Passport Authorities in this case on account of the factual position admitted by the petitioners themselves, yet in case of a presumption conceived of by law, as the one under Section 16 of the Adoption Act, the same would be binding on the Passport Authorities, and it will not be open to the said authorities to collect data/material to repudiate the same. But for an open and shut case of admission at the hands of the applicant himself, as in the instant case, the Passport Authorities are bound by all presumptions of law.

44. For the reasons recorded hereinabove, we find no merit in the claim raised by the petitioner as against the impugned order dated 20.4.2006. The instant writ petition is accordingly dismissed.

(J.S.Khehar)
Judge

(Ranjit Singh)
Judge

(M.M.S.Bedi)
Judge

January 25, 2008
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